Rule 38. Revocation and Abandonment of Permits

(A) Revocation for violations. A petition for revocation of a permit under 10 V.S.A. § 6090(c) may be made to the board by any person who was party to the application, by any adjoining property owner whose property interests are directly affected by an alleged violation, by a municipal or regional planning commission, or any municipal or state agency having an interest which is affected by the development or subdivision. The petition shall consist of an original and 10 copies of the petition which shall include a statement of reasons why the petitioner believes that grounds for revocation exist, a preliminary list of witnesses and the land use permit to which it applies. The board may also consider permit revocation on its own motion. (Amended, effective January 2, 1996.)

(1) Procedure. The board will treat a petition for revocation as an initial pleading in a contested case, in accordance with the notice and hearing procedures of Rule 40 of these rules. The petition shall be served on all parties to the original permit proceeding. No fee is required. (Amended, effective January 2, 1996.)

(2) Grounds for revocation. The board may after hearing revoke a permit if it finds that: (a) The applicant or representative willfully or with gross negligence submitted inaccurate, erroneous, or materially incomplete information in connection with the permit application, and that accurate and complete information may have caused the district commission or

board to deny the application or to require additional or different conditions on the permit; or (b) the applicant or successor in interest has violated the terms of the permit or any permit condition, the approved terms of the application, or the rules of the board; or (c) the applicant or successor in interest has failed to file an affidavit of compliance with respect to specific conditions of a permit, contrary to a request by the board or district commission.

(3) Opportunity to correct a violation. Unless there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation, the board shall give the permit holder reasonable opportunity to correct any violation prior to any order of revocation becoming final. For this purpose, the board shall clearly state in writing the nature of the violation and the steps necessary for its correction or elimination. These terms may include conditions, including the posting of a bond or payments to an escrow account, to assure compliance with the board's order. In the case where a permit holder is responsible for repeated violations, the board may revoke a permit without offering an opportunity to correct a violation.

(4) Judicial action not precluded. Nothing in this rule shall be construed to preclude the board or any other agency of the state from instituting such other action, criminal or civil, as may be permitted by law against the permit holder for any violation.

(B) Abandonment by non-use. Non-use of a permit for a period of three years following the date of issuance shall constitute an abandonment of the development or subdivision and the associated land use permit. For the permit to be "used", construction must have commenced and substantial progress toward completion must have occurred within the three year period, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure. In the initial proceeding or in subsequent proceedings, the district commission or the board may provide for a period longer than three years in which a permit must be used. (Amended, effective January 2, 1996.) **See 10 V.S.A. § 6091(b).**

(1) Initiation of proceeding. A petition to declare a permit void for non-use may be filed by any person who was a party to the application proceedings, by a local or regional planning commission, or by any municipality or state agency having an interest potentially affected by the development or subdivision. The board or a district commission having jurisdiction over a permit may also, on its own motion, initiate a review of its use.

(2) Procedure. Determinations of use or abandonment will be made by the board or the district commission retaining jurisdiction over the permit. The proceeding will be treated as a contested case. Petitions will be heard and disposed of promptly. The board or district commission shall provide at least 20 days' notice of the proceeding to the permit holder, to

all persons who were parties to the permit proceedings, and to the governmental statutory parties listed in Rule 14(A). If the permit holder does not request the right to be heard, the board or district commission may declare the permit void without a hearing.

Rule 40. Appeals

(A) Any party aggrieved by an adverse determination by a district commission may appeal to the board and will be given a de novo hearing on findings, conclusions and permit conditions issued by the district commission.

An appeal shall be filed with the board within 30 days after the date of the decision of the commission. The appeal shall consist of the original and 10 copies of the appeal and of the decision of the commission, and a statement of the reasons why the appellant believes the commission was in error, the issues to be addressed in the appeal, a summary of the evidence that will be presented, and a preliminary list of witnesses who will testify on behalf of the appellant. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Board deems appropriate, which may include dismissal of the appeal.

A filing fee in the amount established in Rule 11 of these rules payable to the State of Vermont shall accompany the appeal. (Amended, effective May 4, 1990 and January 2, 1996.)

See 10 V.S.A. § 6089(a).

(B) The appellant shall send a copy of the notice of appeal by U.S. mail to all parties of right and all parties of record to the commission proceedings and shall file a certification of service with the board at the time it files its appeal. (Amended, effective May 4, 1990.)

(C) The board shall provide notice to parties as required under 10 V.S.A. § 6089(a) by publication of notice of appeal not less than 10 days before the hearing date.

(D) If any party of right or other parties of record to an application wishes to appeal findings of the district commission relating to criteria or issues other than those raised by the appellant, the party must file a cross-appeal with the board within 14 days of the date the notice of appeal was mailed to the party by the appellant, or before the expiration of the 30 days allowed for filing appeals, whichever is later. Such appeal shall comply with the requirements of paragraphs (A) and (B) of this rule, excepting, however, the filing of copies of the decision of the commission with the board is not required. (Added, effective May 4, 1990.)

(E) The scope of the appeal hearing shall be limited to the errors and issues assigned by the appellant and any cross-appellant unless substantial inequity or injustice would result from such limitation.

(F) Any party to the application may enter its appearance in the appeal before the board within 14 days after notice was mailed to the party by the appellant or expiration of the 30 days

allowed for filing appeals, whichever is latest. (Amended, effective May , 1990 and January 2, 1996.)

Rule 41. Administrative Hearing Officer or Panel - Environmental Board

(A) Unless otherwise directed by the board, the chair may appoint a hearing officer or a subcommittee of the board to hear any appeal or petition before the board, or any portion thereof. A subcommittee of the board shall be known as a "hearing panel." (Amended, effective January 2, 1996.)

(B) Parties shall be given due notice of the chair's intention to appoint a hearing officer or panel and shall have reasonable opportunity to object to the appointment within a stated time. If a party raises an objection, the board shall review the chair's decision to determine whether, by reason of complexity, necessity to judge the credibility of witnesses, or other appropriate reasons, the matter should be heard by the full board. The decision of the board shall be final. The hearing officer or panel shall be a member or members of the board including alternates. If it appears that any issue should be heard by the full board by reason of complexity, necessity to judge the credibility of witnesses, or other appropriate reasons, the hearing officer or panel may decline to hear that issue, in which event the matter shall be referred for hearing to the board.

(C) Rules governing proceedings before the hearing officer or panel shall be the same as those which pertain to hearings before

the board. The hearing officer or panel shall hold such prehearing conferences and issue such notices and orders as may be necessary for the orderly and expeditious conduct of hearings.

(D) The hearing officer or panel shall prepare and transmit to the board and all parties of record recommended findings of fact and conclusions of law. A record of proceedings shall be prepared and made available to all board members for their review. The board's final findings and conclusions shall be based on the record. Prior to final decision by the board, parties shall be given an opportunity to request oral argument and to present a memorandum objecting to the recommendations of the panel or officer. Any such request for oral argument or memorandum must be filed within 15 days from the date of service for the proposed findings and conclusions, unless a longer period is provided by the board. (Amended, effective January 2, 1996.) **See 10 V.S.A. § 6027(g).**

(E) Upon its review of the record and the hearing officer's or panel's recommendations, the board shall determine whether the record is complete and whether the hearing should be adjourned. In the case of an appeal, unless otherwise agreed to by the parties, the board shall make a final decision within 20 days after the completion of deliberations by the board. (Amended, effective January 2, 1996.)

Rule 42. Stay of Decisions

No decision of the board or a district commission is automatically stayed by the filing of an appeal. Any party aggrieved by a final order of the board or a district commission may request a stay by written motion filed with the board identifying the order or portion thereof for which a stay is sought and stating in detail the grounds for the request.

In deciding whether to grant or deny a stay, the board may consider the hardship to parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. The board may issue a stay containing such terms and conditions, including the filing of a bond or other security, as it deems just. The chair of the board may issue a preliminary stay which shall be effective for a period not to exceed 30 days. Any preliminary stay shall be reviewed by the board within that 30 day period. A party may file a motion to dissolve a preliminary stay within 10 days of issuance. (Added, effective August 21, 1986 and amended, effective January 2, 1996.)

Rule 43. Appeals to the Board Before Final Decision of District Commissions: Questions of Law and Party Status

(A) Motion for interlocutory appeal regarding all orders or rulings except those concerning party status. Upon motion of any party, the board may permit an appeal to be taken from any interlocutory (preliminary) order or ruling of a district

commission if the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal may materially advance the application process. The appeal shall be limited to questions of law. (Amended, effective May 4, 1990 and January 2, 1996.)

(B) Motion for interlocutory appeal regarding party status. Upon motion of any party, or person denied party status, the board in its sole discretion may review an appeal from any interlocutory (preliminary) order or ruling of a district commission if the order or ruling grants or denies party status and the board determines that such review may materially advance the application process. (Added, effective January 2, 1996.)

(C) Filing of appeal and response. Any motion for interlocutory appeal under this rule must be made to the board within 10 days after entry of the order or ruling appealed from and shall include a copy of that order or ruling. The motion must be accompanied by the filing fee specified in Rule 11(C) of these rules. An original and ten copies of the motion, supporting memorandum, and order or ruling shall be filed with the board and a copy of the motion shall be sent by U.S. mail to all parties and to the district commission. Within five days of such service, an adverse party may file an original and ten copies of a memorandum in reply to the motion with the board. A copy of a memorandum in reply shall be sent to all parties and to the district commission. (Added, effective January 2, 1996.)

(D) Proceedings on appeal. Any interlocutory appeal shall be

determined upon the motion and any response without hearing unless the board otherwise orders. If a motion for interlocutory appeal is granted under section (A) of this rule, board proceedings shall be confined to those issues identified in the order permitting the appeal. If a motion for interlocutory appeal is granted under section (B) of this rule, board proceedings shall be confined to the specific grant(s) or denial(s) of party status identified in the motion. For any interlocutory appeal, the board may convene such hearings to hear oral argument as it deems necessary to dispose of the appeal. Such proceedings shall be conducted as provided by these rules for appeals to the board. (Amended, effective January 2, 1996.)

(E) Stay of district commission proceedings. On receipt of a motion filed under this rule the chair of the board may issue an order staying district commission proceedings until disposition of the motion by the board. (Added, effective January 2, 1996.)

ARTICLE V. SUBSTANTIVE REVIEW - SPECIAL PROCEDURES

Rule 51. Minor Application Procedures

(A) Qualified projects. Any development or subdivision subject to the permit requirements of 10 V.S.A. § 6081 and these Rules may be reviewed in accordance with this Rule as a "Minor Application" if the district commission finds that there is demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria

of 10 V.S.A. § 6086(a). In making this finding, the district commission may consider:

(1) the extent to which potential parties and the district commission have identified issues cognizable under the 10 Criteria;

(2) whether or not other State permits identified in Rule 19 are required and, if so, whether those permits have been obtained or will be obtained in a reasonable period of time;

(3) the extent to which the project has been reviewed by a municipality pursuant to a by-law authorized by 24 V.S.A. Chapter 117;

(4) the extent to which the district commission is able to draft proposed permit conditions addressing potential areas of concern; and

(5) the thoroughness with which the application has addressed each of the 10 criteria.

(B) Preliminary procedures. The district commission shall review each application to determine whether the project qualifies for treatment under this Rule. If the project is found to qualify under section (A), the district commission shall:

(1) prepare a proposed permit including appropriate conditions; and

(2) provide written notice and a copy of the proposed permit to those entitled to written notice under 10 V.S.A. § 6084; and (Added, effective January 2, 1996.)

(3) provide published notice as required by 10 V.S.A. § 6084; the notice shall state that:

(a) the district commission intends to issue a permit without convening a public hearing unless a request for hearing is received by a date specified in the notice which is not less than seven days from the date of publication; and

(b) the preparation of findings of fact and conclusions of law by the district commission may be waived; and

(c) statutory parties, adjoiners, potential parties under Rule 14(B) the district commission, on its own motion, may requ a l ıg;

(d) ar ıring request shall state the criteria or sul teria issue, why a hearing is required and what evidence will presented at the hearing; and

(e) any hearing request by a non-statutory party must include a petition for party status under the rules of the board. (Subsections (c), (d), and (e) added, effective January 2, 1996.)

(C) No hearing requested. If no hearing is requested by a statutory party, adjoining property owner or potential party under Rule 14(B), or by the district commission on its own motion, the proposed permit may be issued with any necessary modifications. The district commission may delegate the authority to sign minor permits which have been approved by the district commission to the district coordinator or the assistant distric oordinator; (Amended, effective May 4, 1990 and January 2, 1996.)

(D) Hearing requested. Upon receipt of a request for a hearing, the district commission shall determine whether or not substantive issues have been raised under the criteria and shall convene a hearing if it determines that substantive issues have been raised. If the district commission determines that substantive issues have not been raised, the district commission may proceed to issue a decision without convening a hearing. (Added, effective January 2, 1996.)

If a hearing is convened, it shall be limited to those criteria or sub-criteria identified by a statutory party, successful petitioner for party status, or by the district commission unless the district commission, at its discretion, determines before or during the hearing, that additional criteria or subcriteria should be addressed. (Amended, effective January 2, 1996.)

(E) Party status petitions. The district commission shall rule on all party status petitions prior to or at the outset of the hearing. (Added, effective January 2, 1996.)

(F) The district commission need only prepare findings of fact and conclusions of law on those criteria or sub-criteria at issue during the hearing. However, findings of fact and conclusions of law may be issued with a decision to address issues identified and resolved during the minor application process, even if no hearing is held. (Amended, effective January 2, 1996.)

(G) Material representations. Upon issuance of a land use permit under minor application procedures, the permit application

and material representations relied on during the review and issuance of a district commission decision shall provide the basis for determining future substantial and material changes to the approved project and for initiating enforcement actions. (Added, effective January 2, 1996.)

Effective May 5, 1992

Rule 60. Qualified Purchasers of Lots in a Subdivision Created Without the Benefit of a Land Use Permit as Required by 10 V.S.A. Chapter 151

(A) Purpose. The purpose of this rule is to create a procedure for providing relief to the qualified purchaser of a lot or lots within a subdivision created without a Land Use Permit required by 10 V.S.A. Chapter 151. This rule provides for a modified application and review procedure by which a qualified purchaser, or a group of qualified purchasers, of one or more lots in a subdivision created without the required Act 250 review may apply for and shall obtain a Land Use Permit. A lot or lots eligible for review under this procedure must have been sold and conveyed to the qualified purchaser or purchasers prior to January 1, 1991 without the required Land Use Permit.

(B) Requirements. The requirements under 10 V.S.A. Chapter 151 may be modified to the minimum extent necessary to issue permits to qualified purchasers seeking relief. A complete application addressing all ten criteria of 10 V.S.A. § 6086(a) shall be filed by the qualified purchaser or purchasers seeking relief. Affidavits may be used to establish compliance for

existing septic systems, water supplies, and other improvements, as determined by the district commission or board. As in other Act 250 proceedings, district commissions and the board may place certain conditions and restrictions in the Land Use Permits to ensure that the values sought to be protected under Act 250 will not be adversely affected. Permit decisions will be based upon consideration of the requirements of the criteria of 10 V.S.A. § 6086(a)(1)-(10), as well as existing improvements, facts, and circumstances of each case.

In order to provide for an efficient review process and to reduce the expense for applicants, the board and the district commissions may require the consolidation of individual applications from any given subdivision. At least two weeks prior to the processing of an application under this rule, the district coordinator shall send notice to all potential applicants in the subdivision with a response period of not less than two weeks. The notice shall include the names and addresses of all lot owners within the subdivision. The lot owner(s) initiating the request shall provide a list of all other lot owners in the subdivision. Lot owners who are not qualified purchasers may join the application but they will not receive the benefit of modified standards under the criteria and will not be entitled by right to a permit under 10 V.S.A. §6025(c). (Amended, effective January 2, 1996.)

(C) Jurisdictional Opinion. Prior to submission of an application, a qualified purchaser must obtain a jurisdictional

opinion from the appropriate district coordinator in order to determine if the subdivided lot in question is subject to Act 250 jurisdiction. The potential applicant must provide the district coordinator with all relevant information including signed affidavits on forms prepared by the board. If the opinion concludes that Act 250 jurisdiction does exist and one or more qualified purchasers have been identified, pre-application assistance will then be provided by the district coordinator.

(D) Eligibility Requirements For Applicants. The purchaser must demonstrate eligibility for relief under 10 V.S.A. § 6025(c). A purchaser eligible for relief under this rule must have purchased the lot or lots and the deed or deeds must have been conveyed prior to January 1, 1991; must not have been involved in any way with the creation of the lot or lots; must not be a person who owned or controlled the land when it was divided or partitioned; and did not know or could not reasonably have known at the time of purchase that the transfer was subject to a permit requirement that had not been met. In making the determination whether the purchaser had knowledge of the illegality of the subdivision, the district coordinator will take into consideration any advisory opinions, declaratory rulings, or judicial determinations which conclude that the purchaser sold or offered for sale any interest in, or commenced construction on, any subdivision in the state without a required Land Use Permit. The board or the district commissions may decide the jurisdictional and purchaser eligibility questions if properly

raised during a public hearing on an application under this rule.

(E) Application Procedure

(1) For the sake of expedient review and an equitable sharing of costs associated with preparing application materials, all purchasers seeking relief within a subdivision may be required to become co-applicants by the district commission or the board.

(2) Pre-application assistance from the district coordinator will be available to all purchasers prior to the filing of an Act 250 application. The application must be submitted on forms supplied by the board and in accordance with Board Rule 10 except as modified herein. (Amended, effective January 2, 1996.)

(3) The district coordinator will review the application for completeness within five working days of receipt of the application. The applicant will be notified if there are deficiencies that need to be corrected. Once the application has been accepted by the district coordinator, procedural requirements for notice and hearings will be followed as set forth in 10 V.S.A. Chapter 151 and Board Rule.

APPENDIX A
Power and Communication Lines and Facilities: Permit Requirements

Effective June 16, 1971

Following the adoption of Appendix A of the rules and regulations of the environmental board (attached hereto), the Vermont general assembly placed the jurisdiction over construction of transmission lines with the public service board and distribution lines with the environmental board. When reading Rule A-3(a), references to "transmission" lines are to be considered applicable to distribution lines only.

A transmission facility for electricity requiring a certificate of public good is defined in public service board general order No. 51, dated October 27, 1972. The public service board shall rule on any issue of jurisdiction under general order No. 51.

Rules

RULE A-1. PURPOS[illegible]

To est[illegible]lish [illegible]rules and procedures for applications for a permit unde[illegible]he land use and development act, 10 V.S.A. § 6001 by public an[illegible] pri[illegible]vate utilities.

RULE A-2. DEFINITION

Power and communication lines and facilities, hereinafter "transmission facilities" or "facilities," shall mean any wire, conduit, and physical structure or equipment related thereto whether above, below, or on ground used for the purpose of carrying, transmitting, distributing, storing, or consuming of electricity [illegible]r communications, but shall not include an electric generation [illegible] transmission facility which requires a certificate of public g[illegible]d under § 248 of Title 30. A transmission facility for electricity requiring a certificate of public good is defined in public service board general order No. 51, dated October 27, 1972. The public service board shall rule on any issue of jurisdiction under general order No. 51.

RULE A-3 SCOPE

(a) P[illegible]mits required:

Unl[illegible]s specifically exempted under Rule A-3(c) no person shall, w[illegible]thout having obtained a permit under 10 V.S.A. chapter 151, c[illegible]nstruct, relocate, reconstruct, or extend any transmission

Rule A-3.

facility for any purpose whether above, below, or on ground if the construction of improvements for the right-of-way involves more than one acre (for example, 2,200' long based on minimum width of 20' right-of-way) if within a municipality not having permanent zoning and subdivision ordinances or more than ten acres (for example, 22,000' long based on minimum width of 20' right-of-way) if a municipally owned utility. Reconstruction does not mean repair or replacement of component parts. For the purposes of this subsection if a transmission facility is constructed, relocated, reconstructed, or extended in segments and if at any time the total acreage of the improvements for the right-of-way of all segments completed within the preceding three (3) months together with any additional segment or segments to be constructed will equal or exceed the minimum acreage specified in this subsection, then a permit shall be required for the segment or segments of the facility which result in the acreage of the right-of-way to exceed such minimums.

(b) Exceptions:

(i) a generation or transmission facility which requires a certificate of public good under 30 V.S.A. chapter 5, § 248, is exempted under 10 V.S.A. § 6001(3), and no permit is, therefore, required.

(ii) in an emergency situation requiring immediate action, such as to protect the health or safety of the public, utility companies may take whatever steps without notice or hearing or a permit as may be necessary or appropriate to meet such an emergency on a temporary basis, but upon the cessation of said emergency, the provisions of these Rules and Regulations will apply. Any action taken under this subsection will be followed within 48 hours by written notice to the environmental board.

(iii) in situations requiring the temporary installation of transmission facilities, the utility companies may proceed with construction, relocation, reconstruction, or extension of transmission facilities without complying with the provisions of these Rules and Regulations after obtaining written approval from the applicable district environmental commission.

(c) Exemptions:

Subject to the provisions of Rule A-4 below the following transmission facilities shall be exempt from the permit requirements of the Rules and Regulations of the environmental board and this Appendix A:

(i) a transmission facility within a development or subdivision having a permit from a district environmental commission; or

(ii) an under or on ground transmission facility below the elevation of 2,500', reseeded and/or reforested provided it is

not located in a natural area, scenic area, or scenic corridor, as defined in 10 V.S.A. § 1309; or (iii) an under or on ground transmission facility within a right-of-way, including a public highway, existing, cleared, and in use, as of the effective date of these rules or having a permit under 10 V.S.A. chapter 151 provided that such installation will not require widening or changing the character of the existing right-of-way or as may be specified in a permit; or

(iv) an above ground transmission facility in a right-of-way existing, cleared, and in use, as of the effective date of these rules, excepting rights-of-way for public highways, where such installation does not require widening or changing of the character of the right-of-way; or

(v) an above ground transmission facility to be located on existing, and in use, transmission facilities.

(d) All utilities undertaking the development of a transmission facility considered exempt under subsection (c) above will notify in writing the district environmental commission in which the majority of the facility will lie of said development.

RULE A-4. INSTALLATIONS

(a) Underground installation should be installed whenever feasible.

(b) All utility companies should contact each other prior to underground installation in order to coordinate efforts.

(c) Installation shall be such as to make the facility inconspicuous and not have an undue adverse effect on the scenic and aesthetic qualities and character of the area; due consideration shall be given to screening from view and lines of sight from public highways, and residential and recreational areas height, number, color, type, and material of poles, width and degree of clearance of natural growth and cover; encroachment on open spaces, historic sites, rare and irreplaceable natural areas, conspicuous natural out-cropping on hillsides and ridgelines of exposed natural features of the countryside.

RULE A-5. PERMIT APPLICATIONS

An application for a permit from the district environmental commission to construct, relocate, reconstruct, or extend any transmission facility shall contain the following information and documents and shall be submitted to the district commission in which the greatest number of miles of the transmission facility are located. The utility undertaking the construction of a transmission facility shall apply for the permit under 10 V.S.A. chapter 151, if said permit is required and will disclose anticipated use by other utilities.

(a) General location:

(i) approximate location on a 20' contour U.S.G.S. map, except when other contour intervals are requested by the district commission after filing of an application.

(b) Plan showing:

(i) pole, transformer, and substation locations, if applicable. Proof of inability to comply shall be furnished in the permit application and the approximate locations of poles, transformers, and substations shall be provided in areas where property access is not available.

(ii) approximate highway rights-of-way related to the lines or to the community the line is to serve.

(iii) approximate location of the forest canopy of any existing wooded areas, and the forest canopy after the proposed construction.

(iv) all lot lines intersecting the existing or proposed rights-of-way and names of property owners.

(c) Specifications:

(i) a drawing showing a representative profile of a supporting structure as related to existing buildings and tree heights.

(ii) elevation drawings of any building to be constructed as part of the transmission facility and its relation to existing man-made and natural objects on the site and along the periphery of contiguous properties within 500'. In urban areas with a population in excess of 2,500, a general profile of the buildings may replace the requirement for elevation drawings.

(iii) a typical drawing of a supporting structure to be used.

(iv) a list of specifications, including voltage, pole sizes, cross-arms, wire size, guys.

(v) a list of specifications for the major, visible components and exterior materials and color of any buildings.

(vi) specifications for any ground cover to be seeded, refoliated, planted or sown and maintained.

(d) Certification:

(i) certification and supporting evidence to prove that use of an existing right-of-way is not feasible or practicable if a new right-of-way is intended.

RULE A-6. CARE OF RIGHT-OF-WAY

Right-of-way improvements shall be specified in the application and shall clearly not have an undue adverse effect on the ecology and aesthetics of the area, and should include vegetation control techniques to avoid unreasonable soil erosion or water pollution. All herbicide applications shall be in strict conformance with the regulatory and licensing requirements of the commissioner of agriculture or as provided by statute.

RULE A-7. STRUCTURES.

Nothing herein shall be construed to exempt structures and other physical construction or placement related to transmission facilities from such other requirements of the land use and development act and the Rules and Regulations of the environmental board as may be applicable.

(March 11, 1997)
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EXHIBIT C: ACT 250's TEN CRITERIA AND THE ACT 250 HEARING PROCESS

Vermont has achieved balanced environmental protection through the consistent application of Act 250's ten criteria in the quasi-judicial process. The first step in obtaining an Act 250 permit is the filing of an application with a district environmental commission.

There are nine district environmental commissions, each with an assigned geographical area. The commissions are comprised of three citizen volunteers. A full-time coordinator is assigned to each district commission. The district commissions conduct their Act 250 permit application hearings as contested cases under Vermont's Administrative Procedure Act. There are formal notice requirements to "statutory parties," and usually to adjoining property owners. Other parties are allowed pursuant to the Environmental Board's rules, although only statutory parties have appeal rights to the Vermont Supreme Court. See 10 V.S.A. §6085(c) and Environmental Board Rule 14; In re Cabot Creamery Cooperative, Inc., 164 Vt. 26, 663 A.2d 940 (1995).

The applicant for an Act 250 permit always has the burden of going forward and producing evidence upon which affirmative findings can be made under all ten Act 250 criteria. The party that bears the burden of persuasion varies depending upon the particular criterion at issue. See 10 V.S.A. § 6088. The allocation of the burden of proof operates in conjunction with the requirement that before a permit can be issued, the district commission must make the affirmative findings required under the

ten Act 250 criteria.

Appeals from district commission decisions are to the Environmental Board. The Environmental Board is a quasi-judicial board comprised of eight citizen volunteers, and a full-time chair. The Environmental Board also employs an executive director, general counsel, three staff attorneys, and a chief coordinator. One staff attorney is specifically assigned to serve the district commissions. Like the district commissions, an appeal to the Environmental Board is an administrative procedure contested case. The appeal is heard de novo. On appeal, the allocation of the burden of proof is the same as that before the district commission.

Since Act 250 went into effect on June 1, 1970, a communication or broadcast facility requires an Act 250 permit if it (a) was constructed above an elevation of 2,500 feet; or (b) was constructed on a tract of land greater than 1 acre in size. If the municipality in which the facility is to be constructed has adopted permanent zoning and subdivision, then the jurisdictional threshold increases from 1 acre to 10 acres. Since July 1, 1997, in addition to the aforementioned, any facility that includes the construction of a support structure of 20 feet or more requires an Act 250 permit. The review extends to any ancillary construction such as equipment buildings, foundation pads, cables, wires, antennas or hardware, and all means of ingress and egress to the support structure. See 10 V.S.A. §§ 6001(3) and 6001c.

EXHIBIT C

VERMONT
Environmental Board

Twenty-fifth Anniversary Report
1970 – 1995